

**LaValle, Diane**

58009

**From:** Billings, Delmer  
**Sent:** Tuesday, June 22, 1999 8:28 AM  
**To:** LaValle, Diane; Coburn, Kevin  
**Subject:** FW: RSPA-99-5013 (HM-229)  
**Importance:** High

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Comments

-----Original Message-----

**From:** Donna Montagino [SMTP:montaginodl@arlaw.com]  
**Sent:** Monday, June 21, 1999 6:09 PM  
**To:** Rules  
**Subject:** RSPA-99-5013 (HM-229) -&\$

Please see attachment for our comments regarding the above referenced proposed rule.

Thank you.

Warren E. Byrd  
Adams and Reese



(225) 336-5200

June 21, 1999

Dockets Management System  
U.S. Department of Transportation  
Room PL 401  
400 Seventh Street SW  
Washington, DC 20590-000 1

RE: RSPA-99-50 13 (HM-229)

Greetings:

Adams and Reese LLP, on behalf of its client Union Pacific Railroad Company ("Union Pacific") submits two copies of comments to the proposed revisions to the Incident Reporting Requirements found in 49 CFR Parts 171.15 and 171.16. This submission is in response to the request for comments by the U.S. Department of Transportation, Research and Special Programs Administration, found in the Federal Register at Volume 64, Number 55, dated March 23, 1999, concerning 49 CFR Part 171.

The enclosed comments and proposed revisions were prepared by Adams and Reese and Union Pacific Railroad in conjunction with the Louisiana State Police as a joint effort to clarify what entities are to be notified in the event of a hazardous materials incident, as well as to place these requirements under the umbrella of a consistent and uniform federal law throughout the United States, but still grants appropriate authority (through federal law) to the designated agency in each state with regard to hazardous materials incidents which occur during transpiration by rail. Both parties feel strongly that the suggested revisions would be of great benefit to the transportation industry by insuring a uniform system of laws to govern hazardous materials incident reporting by rail, as well as recognizing legitimate state interests relative to receiving timely notice of these incidents.

Lastly, in general Adams and Reese and the Union Pacific Railroad Company hereby adopt by reference the comments and attachments transmitted to the U.S. Department of Transportation by letter dated June 14, 1999 (which included draft versions of 171.15 and 171.16) by reference, as if set forth herein inextenso. Additionally, we reserve the right to supplement the administrative record with additional comments and/or proposed regulatory changes to 49 CFR 17 1.15 and 171.16. For further information or if you have any questions or need any clarification, please contact the undersigned at (225) 336-5200.

With kind regards, I am,

Sincerely,

Warren E. Byrd

WEB/dlm

Attachment A: Comments by Adams and Reese LLP and Union Pacific Railroad  
Company

Attachment B: Comments made by the Louisiana Department of Public Safety and  
Corrections (9 pages)

**COMMENTS BY ADAMS AND REESE LLP  
AND UNION PACIFIC RAILROAD COMPANY  
TO U.S. DEPARTMENT OF TRANSPORTATION**

Submitted by: Warren E. Byrd  
c/o Adams and Reese LLP  
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Date: June 21, 1999

**GENERAL BACKGROUND**

Several years ago the Louisiana Department of Public Safety and Corrections, Office of State Police, filed two assessments for civil penalties against the Union Pacific Railroad Company for alleged violations of State Hazardous Materials Reporting events under LSA R.S. 32:1510. The Union Pacific Railroad Company objected to the jurisdiction of the Louisiana State Police with regard to the reporting of "hazardous materials incidents" which were preempted by federal law, specifically the FRSA and other federal laws. When the Louisiana State Police and Union Pacific were not able to effectuate an amicable resolution of these two civil penalty assessments, in the form of a dismissal, Union Pacific filed suit in the United States District Court, Middle District of Louisiana, against the Louisiana State Police alleging both federal preemption and violation of the commerce clause and the supremacy clause of the U.S. Constitution. Cross motions for summary judgment were filed by both parties and the court ultimately granted summary judgment in favor of Union Pacific.

Following the issuance of the judgment by the federal court the parties jointly requested that the litigation be "administratively closed" in order to provide appropriate time to the parties to effectuate the necessary changes in the arena of hazardous materials reporting incidents in rail transportation.

Notwithstanding the above, Union Pacific Railroad Company and the Louisiana State Police have continued to work toward an amicable resolution of this matter. In that regard, when the U.S. Department of Transportation requested public comments in the Federal Register of March 23, 1999, both the Louisiana State Police and Union Pacific agreed to provide comments and petition the U.S. Department of Transportation for appropriate relief.

## ANALYSIS

There is an urgent need for the U.S. Department of Transportation to utilize its preemptive authority under the Federal Railroad Safety Act (FRSA) to create a uniform body of law which clearly and unequivocally places the reporting of hazardous materials incidents under federal law, and at the same time ensures that the appropriate state (in this case the State of Louisiana) receives notice at the same time notice is being provided to the National Response Center.

The Louisiana State Police has a legitimate concern in receiving a prompt notice of hazardous materials incidents which meet the reporting threshold and which occur within its boundaries and thereby possibly endanger the public health, safety and welfare of Louisiana citizens. The same can be said for every other State.

The Union Pacific Railroad Company believes that an appropriate mechanism should be devised under federal law to require that a carrier provide prompt notice to both the NRC and to the appropriate designated agency of each state in a single call.

It seems logical that one of the first "agencies" to respond to reportable hazardous material incident would be the HAZMAT unit of that particular state. (In this case the HAZMAT unit operated under the jurisdiction of the Louisiana State Police).

Since the existing Louisiana reporting requirements are different from the federal requirements, it is necessary for the U.S. Department of Transportation to enact appropriate "federal" laws which not only preempt this field but in so preempting specifically provide for protection of the states with regard to their legitimate rights to receive "notice" of reportable hazardous materials incidents at the same time such notice is provided to the federal government.

The changes necessary would be to 49 CFR Part 171.15 and 171.16. This would cover not only in the immediate verbal notification but the follow-up written reports. By creating a uniform "federal" law the mandates of the FRSA would be met and there would be no further confusion among the states with regard to any attempts to enact or enforce individual state requirements. Additionally, the states need provisions within the "federal" system which would enable the states to have appropriate laws to seek enforcement. This is a matter which can best be addressed by the Louisiana State Police itself, but is an area which Union Pacific Railroad Company recognizes is of concern and importance to each individual state and should be addressed by the U.S. Department of Transportation for federal uniformity and consistency relative to the actions which can be taken by the respective states regarding enforcement.

As previously stated, Adams and Reese and Union Pacific Railroad Company adopt by reference the comments (with attachments) made by the Louisiana Department of Public Safety and Corrections, Office of State Police, by its transmittal dated June 14, 1999, as if set forth herein inextenso. Those comments (and attachments) include suggested revisions to 49 CFR 171.15 and 171.16 which are specifically incorporated herein, by reference, as if set forth herein inextenso.

## **CONCLUSION**

It is imperative that the U.S. Department of Transportation ensure that the mandates of the FRSA are followed and that a uniform and consistent body of federal law with regard to hazardous material reportable incidents exist. The respective states have legitimate concerns regarding their need to receive prompt verbal notice of reportable hazardous material incidents which occur within their respective state boundaries. Additionally, the respective states also have legitimate concerns regarding enforcement under a uniform and consistent federal system of laws. By addressing these legitimate concerns, the U.S. Department of Transportation would also be establishing a functioning and protective body of federal law which would recognize the unique position of the railroad, as well as those legitimate interests of the state which can be met through appropriate changes through a creation of a uniform and consistent body of federal law which preempts the area of hazardous materials reporting incidents by rail.

Respectfully Submitted,

**ADAMS AND REESE, L.L.P.**

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